IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.96 OF 2002

IN

WRIT PETITION NO.1398 OF 1995

...

Mahesh Harishchandra Rane
and others ...Appellants

v/s.

The Cloth Market & Shops Board
for Gr.Bombay & Anr. ...Respondents

...

Mr.V.P.Vaidya for the Appellants.
Mrs.Lata Desai for the Respondents.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. By this appeal, the Appellant challenges the

order dated 11th October, 2001 passed in Writ Petition No.1398 of 1995. By that order the learned single Judge has allowed the Writ Petition, which was filed by the present Respondents.

2. The facts which are relevant and material for deciding this Appeal are that the present Appellants filed a complaint (ULP) No.253 of 1994 complaining against the order dated 16-1-1994 issued by the present Respondents terminating their services. According to them, the Respondents are guilty of unfair labour practice. In that complaint, they had made an application for interim reliefs. That Application was decided by the Labour Court by order dated 16-1-1994. The Labour Court recorded a prima facie finding about unfair labour practice and granted interim reliefs in favour of the Appellants.

3. That order was challenged by the Respondent in revision before the Industrial Court. That Revision was decided by order dated 13-6-1995. The Industrial Court dismissed the revision and confirmed the order granting interim order in favour of the Appellants.

4. That order was challenged in Writ Petition

No.1398 of 1995 by the Respondents.

5. The learned single Judge has allowed the Writ Petition and set aside the order passed by the Labour Court granting interim reliefs in favour of the Appellants as also the order of the Industrial Court confirming that order in Revision. Perusal of the order shows that the learned single Judge relying on the judgment of the learned single Judge in the case of Husain Mithu Mhasvadkar v/s. Bombay Iron and Steel Labour Board & ors., reported in 1990 II CLR 860 came to the prima facie conclusion that the Respondent/Board is not an Industry for the purpose of Unfair Labour Practices Act and therefore, the Labour Court should not have granted interim order in favour of the Appellants.

6. The submission of the learned Counsel appearing for the Appellants is that the judgment of the learned single Judge in the case of Mhasvadkar, referred to above, was not in relation to the Respondent-Board. He submits that whether the Respondent-Board is an industry for the purpose of unfair labour practice is a question which is required to be decided on the basis of the evidence

that the parties may lead before the Labour Court. According to him, the learned single Judge was not justified in recording the finding that the Respondent-Board is not an industry for the purpose of Unfair Labour Practices Act.

7. In our opinion, the submission is not well founded. It is obvious from the order that the learned single Judge has recorded the finding that the Respondent is not an industry for the purpose of considering whether the Labour court was justified in granting interim order in favour of the Appellant and therefore that is a prima facie finding recorded by the learned single Judge only for the purpose of considering the question whether the Labour Court was justified in granting interim relief in favour of the Respondents and in recording that finding, in our opinion, the learned single Judge has rightly relied on the judgment of the learned single Judge of this court in Mhasvadkar’s case. Though it is true, that in that case the question whether the Respondent-board was an industry was not considered, but the Board which was the Respondent before the learned single Judge who decided the Mhasvadkar’s case was also a board constituted under the same Act.

Therefore, we do not see any reason to interfere with the order passed by the learned single Judge, however, it is made clear that the finding recorded by the learned single Judge that the Respondent-board is not an industry for the purpose of Unfair Labour Practices Act is a prima facie finding and is relevant only for the purpose of deciding the question of grant of interim reliefs and therefore, the parties will be free to lead evidence before the Labour Court where the main complaint is pending on this issue and the question whether the Respondent-board is an industry for the purpose of Unfair Labour Practices Act or not will be decided finally by the Labour Court on the basis of the evidence that may be produced by the parties before it. The observations made by the learned single Judge in the order which is impugned in this appeal will not be relevant and will not come in the way of the present Appellants.

8. The appeal is disposed of. As the complaint has remained pending for a number of years and interim order made by the Labour Court has not actually operated in favour of the workers, hearing of complaint pending before the Labour Court is

expedited.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)